

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DARREN DUNCAN, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

BAYER CROPSCIENCE LP; et al.,

Defendants.

Case No. 3:21-cv-00158-NJR

**PLAINTIFF’S RESPONSE TO COURT’S FEBRUARY 17, 2021 ORDER AND  
REQUEST FOR APPOINTMENT OF DEREK Y. BRANDT TO EXECUTIVE  
COMMITTEE**

By Order dated February 17, 2021, the Court instructed the parties to inform it in writing of any objection to the proposed consolidation of this action with several related actions or to the appointment of an Executive Committee as interim lead Plaintiffs’ counsel. Feb. 17, 2021 Minute Order [Doc. 10]. Plaintiff Darren Duncan supports consolidation of this suit with the related actions, and supports the appointment of an Executive Committee, but seeks appointment of his undersigned counsel as an additional member of the proposed Executive Committee, and further states as follows.

**Background**

Seven lawsuits currently are pending before this Court (together, the “SDIL Actions”) asserting substantially-similar claims relating to allegedly anticompetitive conduct in the U.S. market for crop inputs—seeds, herbicides, insecticides, and the like used in crop farming. The plaintiffs in those suits are:

Plaintiff	SDIL Case Number
Barbara Piper, as Executrix of the Estate of Michael Piper, Deceased	No. 3:21-cv-00021-NJR
John C. Swanson	No. 3:21-cv-00046-NJR
Charles Lex	No. 3:21-cv-00122-NJR
Darren Duncan	No. 3:21-cv-00158-NJR
Jones Planting Co. III	No. 3:21-cv-00173-NJR
Jason J. Canjar d/b/a Yedinak Registered Holsteins	No. 3:21-cv-00181-NJR
Vienna Eqho Farms	No. 3:21-cv-00204-NJR

In each case, a farmer or farming interest asserts claims on behalf of a nationwide putative class (and/or certain state classes) against the same core group of defendants.<sup>1</sup> Those defendants include (i) four major manufacturers of crop inputs, who are alleged to dominate that market: Bayer Cropsience LP and Bayer Cropsience Inc., Corteva Inc., Syngenta Corporation, and BASF Corporation; (ii) crop inputs wholesalers Cargill Incorporated, Winfield United LLC, and Univar Solutions, Inc.; and (iii) crop inputs retailers CHS Inc., Nutrien Ag Solutions Inc., Growmark Inc., Simplot AB Retail Sub, Inc., Federated Co-operatives Ltd., and Tenkoz Inc.<sup>2</sup>

On February 12, 2021, the plaintiffs in the *Piper*, *Lex*, and *Swanson* cases moved this Court for consolidation of the SDIL Actions and the appointment as interim lead counsel of an Executive Committee composed of (1) Stephen Tillery of Korein Tillery, LLC, (2) Vincent Briganti of Lowey Dannenberg, P.C., (3) Linda Nussbaum of Nussbaum Law Group, P.C., and (4) Joseph Bruckner of Lockridge Grindal Nauen P.L.L.P., with Messrs. Tillery and Briganti as Committee Co-Chairs. *Piper* (No. 21-cv-21) Doc. 53 (hereafter “Motion to Consolidate”). Plaintiffs in most of the SDIL Actions have filed a Consolidated Amended Complaint. *See Piper* (No. 21-cv-21)

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<sup>1</sup> *See Piper* Complt. (No. 21-cv-21, Doc. 1); *Duncan* Complt. (No. 21-cv-158, Doc. 1).

<sup>2</sup> *See id.* Some actions assert claims against additional or slightly varying groups of defendants.

Doc. 55 (including plaintiffs from *Piper*, *Swanson*, *Lex*, and *Jones Planting* actions); *Jones Planting* (No. 21-cv-173) Doc. 8 (including same plaintiffs plus plaintiff from *Canjar* action).<sup>3</sup>

### **Plaintiff Duncan's Position**

Plaintiff Duncan supports consolidation of this action with the other SDIL Actions. Plaintiff also supports the appointment of an Executive Committee, chaired by Mr. Tillery and Mr. Briganti, to act as interim lead counsel for all plaintiffs. For all the reasons set out in the Motion to Consolidate, Plaintiff believes these actions are well-suited for the appointment of an Executive Committee and believes Mr. Tillery and Mr. Briganti are particularly well-qualified to co-chair that committee.

In addition to those appointments, Plaintiff Duncan requests that the Court also appoint his counsel, Derek Brandt of McCune Wright Arevalo, LLP (“McCune Wright” or “MWA”), as an additional member of the Executive Committee. The seven SDIL Actions (potentially together with at least six actions still pending in other districts) represent a substantial undertaking of litigation commenced by farmers from around the country against a large number of major corporate defendants. Plaintiff Duncan is an Illinois farmer and well-suited to provide evidence in this Court.<sup>4</sup> The defendants in these actions are headquartered around the country (if not around

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<sup>3</sup> On February 23, 2021, the plaintiffs in *Piper*, *Lex*, *Swanson*, *Jones Planting*, and *Canjar* moved the United States Judicial Panel on Multidistrict Litigation to transfer to this Court, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated proceedings, thirteen “Related Actions,” including the seven SDIL Actions and six additional actions then-pending in other districts. *See* Motion to Transfer filed in *In re: Crop Inputs Antitrust Litig.* (MDL No. 2993) [JPML Doc. 1, 1-1].

<sup>4</sup> Plaintiff Duncan is an Illinois farmer who has farmed thousands of acres in Illinois for over two decades. During the class period he has purchased crop inputs that were manufactured and sold by one or more of the Defendants and/or their authorized retailers, including Defendants Corteva, Syngenta, and Nutrien. *See* Duncan Compl. (21-cv-158, Doc. 1) ¶ 18. Plaintiff Piper sues on behalf of the Estate of an Illinois farmer. *Piper* Cons. Am. Compl. (21-cv-21, Doc. 55) ¶ 16. No other plaintiff in the remaining SDIL Actions is an Illinois farmer. *See* Cons. Am. Compl. Filed in *Jones Planting* (21-cv-173, Doc. 8) at ¶¶ 17, 18, 20, 21 (*Swanson* (NY); *Lex* (IA); *Jones Planting* (IA); *Canjar* (MS)); Compl. in *Vienna Eqho* (21-cv-204, Doc. 1) ¶ 15 (WI).

the world). Each of the dozen or more defendants is, on its own, a significant player in crop inputs. Some are among the largest agricultural and chemical interests in the world. The defendants undoubtedly will be well-funded and well-coordinated to defend these actions. Under these circumstances, adding a fifth executive committee member is reasonable and appropriate. *Cf.*, Case Mgmt. Order No. 4, *In re Pradaxa (Dabigatran Etexilate) Products Liability Litig.*, MDL No. 2385, 3:12-md-02385-DRH-SCW (S.D. Ill.) [Doc. 36] (appointing 12-lawyer executive committee with 5 co-lead counsel, along with 13-lawyer steering committee and liaison counsel).

This litigation, moreover, is likely to be expensive and time-consuming, and will demand significant antitrust expertise. Mr. Brandt and McCune Wright meet these needs and are well-positioned to help conduct the litigation—particularly in this Court. Mr. Brandt manages MWA’s Midwest (Edwardsville, Illinois) office, in this district. He regularly practices in this Court and currently co-leads a putative class action antitrust suit pending before it. *See Conrad v. Jimmy John’s Franchise, LLC, et al.*, No. 3:18-cv-00133-NJR. Mr. Brandt’s local practice, including his experience in *Conrad* and other complex cases in this Court, will benefit the farmers in this consolidated proceeding. Mr. Brandt and MWA have additional relevant experience as well, including their current co-lead role in other antitrust class suits. *See, e.g., Deslandes v. McDonald’s USA, LLC, et al.*, No. 17-cv-4875 (N.D. Ill.); *In re Papa John’s Employee and Franchisee Employee Antitrust Litig.*, No. 18-cv-825 (W.D. Ky.) (co-lead with Lowey Dannenberg). Mr. Brandt’s additional antitrust resume includes successfully representing a St. Louis-area surgical device manufacturer in a Sherman Act suit against its dominant global competitor, resulting in an 8-figure pretrial settlement. In other individual suits, he has represented major corporate plaintiffs in *In re Aluminum Warehousing Antitrust Litig.*, MDL No. 2481 (S.D.N.Y.), in which, among other roles, he successfully argued the plaintiffs’ appeal of an adverse trial court ruling on the issue

of antitrust injury. *See Eastman Kodak Co. et al. v. Henry Bath, LLC, et al.*, 936 F.3d 86 (2d Cir. 2019).

McCune Wright is a 25-lawyer AV-rated firm focused on consumer protection, product liability, and other complex class action and commercial litigations. The firm has a lengthy track record of innovating important consumer protection litigations. For instance, MWA was at the leading edge of suits that spawned major MDL proceedings involving Toyota unintended acceleration defects and banking overdraft practices, along with the franchise antitrust suits previously mentioned. Along with the litigations noted above, MWA or firm members have been appointed to numerous MDL leadership positions, some of which include:

- Co-Lead Interim Class Counsel in *Arrington, et al. v. Burger King Worldwide, Inc., et al.*, No. 18-24128-CIV (S.D. Fla.) (antitrust class action);
- Lead Interim Class Counsel in *In re Toyota Hybrid Brake Litig.*, Consol. Case No. 4:20-cv-127 (E.D. Tex.);
- Co-Lead Class Counsel in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litig.*, MDL No. 2613 (Dist. S. Car.);
- Co-Lead Interim Class Counsel in *Bang v. BMW of N.A.*, No. 2:15-cv-6945 (MCA) (LDW) (D.N.J.);
- Co-Lead Class Counsel in *In re: Hyundai & Kia Fuel Economy Litig.*, MDL No. 2424 (C.D. Cal.);
- Co-Lead Interim Class Counsel in *In re: AIG Workers Compensation Ins. Policyholder Litig.*, MDL No. 2519 (N.D. Ill.) (appointment of Derek Brandt);
- Plaintiffs' Executive Committee in *In re: Ford Fusion and C-Max Fuel Economy Litig.*, MDL No. 2450 (S.D.N.Y.);
- Plaintiffs' Executive Committee in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litig.*, MDL No. 2151 (C.D. Cal.);
- Plaintiffs' Steering Committee in consolidated proceedings re *Bayer Essure Inc., et al. Litig.*, No. 14-cv-7315 (E.D. Pa.);
- Co-Lead Settlement Class Counsel in *Lusnak et al. v. Bank of America*, No. 2:14-cv-1855 (C.D. Cal.);
- Plaintiffs' Steering Committee in consolidated proceeding re *Gilead Tenofovir Litig.*, No. CJC-19-005043 (Cal. Superior Ct. of San Francisco JCCP).

McCune Wright has led many other significant litigations, including as outside counsel in *State of Arizona, ex rel. Mark Brnovich, Attorney General v. Volkswagen AG, et al.*, No. CV 2006-005112

(Ariz. Super. Ct., Maricopa County), where the firm assisted the state of Arizona in securing tens of millions of dollars in civil penalties and restitution from Volkswagen relating to its emissions scandal. Members of the firm have been appointed class counsel in dozens of state and federal class actions, and have served as trial counsel in class cases tried to verdict, including in a matter that resulted in a bench verdict in excess of \$200 million. *See Gutierrez, et al. v. Wells Fargo Bank, N.A.*, No. 3:07-cv-05923 (N.D. Cal.). Aside from its local presence, the firm is conveniently located from its Ontario, California headquarters to serve farmers in California's Central, Coachella, and Imperial Valleys—some of America's most prominent farming regions. Additional information about McCune Wright and Mr. Brandt may be found at [www.mccunewright.com](http://www.mccunewright.com).

For all these reasons, Plaintiff Darren Duncan supports consolidation of the SDIL Actions and further requests the appointment of Derek Y. Brandt of McCune Wright Arevalo, LLP as an additional member of the Executive Committee to serve as interim lead plaintiffs' counsel.

Dated: March 3, 2021

By: s/ Derek Y. Brandt

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*Counsel for Plaintiff Duncan and the Proposed  
 Classes*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Plaintiff's *Response to Court's February 17, 2021 Order and Request for Appointment of Derek Y. Brandt to Executive Committee* was filed on this date electronically through the Court's CM/ECF system, which will send electronic notice to counsel of record for all parties.

Dated: March 3, 2021

s/ Derek Y. Brandt